IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/06/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.341 OF 2002

Balasubramaniam .. Appellant

-Vs-

State
by Inspector of Police
R-1, Pothanur Police Station
Coimbatore District .. Respondent

This appeal is preferred under Section 374 of Cr.P. C. against the judgment of conviction and sentence passed by the learned District and Addl. Sessions judge, Coimbatore (Fast Track Court No.3) made in S. C.No.134 of 2000 dated 13.2.2002.

!For Appellant : Mr.Raghunathan
for Mr.S.Sairam

^For Respondent : Mr.O.Srinath,
Govt. Advocate(Crl. side)

:JUDGMENT

The sole accused, who was charged, tried and found guilty under Section 498-A I.P.C and sentenced to undergo two years R.I. and to pay fine of Rs.15,000/-, in default, to undergo six months R.I., guilty under Section 376 I.P.C. and sentenced to undergo 8 years R.I. and to pay fine of Rs.35,000/-, in default, to undergo one year R.I. respectively has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal can be stated as follows:

The accused/appellant herein is the resident of Kuniamuthur. He married P.W.2, Shantha on 23.1.1998 and was living with her in Door No.14 /1 in Kuniamuthur within Pothanur police limits. Ever since the marriage, the accused was treating her cruelly. The accused had already married P.W.5, Ranjeetha, in the year 1991, which fact was suppressed by him. On 5.2.1998, P.W.2 was beaten by the accused. P.W.2, who could not tolerate the same, consumed kerosene to commit suicide at her house. When the accused came to know about the same, he took her to Sangeetha Hospital for treatment. P.W.10, who was on duty at that time in the said hospital, gave treatment to her and

Ex.P.5 is the medical report therefor. When P.W.2 was hospitalised, the accused took P.W.1 to his house on the guise to fetch food from the house to the hospital. When he took her home on the same day at about 6.00 p.m., he forcibly committed sexual assault on her and tied Thali to P.W.1 also. After the return of P.W.2 from the the hospital, P.W.1 was also staying in the same house. Since, she did not have regular periods, entertaining suspicion, she admitted herself in G.B.Hospital run by P.W.7 on 26.7.1998 and complained of pain and stoppage of menstrual period. She was subjected to medical examination. At the time of medical examination, it was found that she was two or three months pregnant. She has deposed that it was missed abortion. When P.W.11, Sub Inspector of Police, was in-charge of Pothanur Police Station, P.W.1 lodged a complaint, which was marked as Ex.P.1. On the strength of the same, a case in Crime No.93/99 under Sections 366, 376, 313 and 498 I. P.C was registered against the accused. The F.I.R., Ex.P.6 was despatched to concerned Court. P.W.12, Inspector took up investigation, proceeded to the spot and prepared observation mahazar in the presence of the witnesses and rough sketch also. He examined the witnesses and recorded the statements. The next day, he arrested the accused and remanded him to Judicial custody. P.W.1 complainant was sent for medical examination, who was examined by P.W.9 and a report has been marked as Ex.P.4. The accused was also medically examined in respect of his potency and found to be positive. P.W.12, Inspector of Police took up further investigation, enquired the witnesses and recorded their statements and he also examined the medical officers referred to above. On completion of the investigation, he laid charges under Section 498A, 366 and 376/1 I.P.C. against the appellant.

3. In order to prove the charges levelled against the appellant, 12 witnesses were examined and 7 exhibits were marked. No M.Os were marked. After the evidence on the side of the prosecution was over, the accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, which he flatly denied as false. No defence witness was examined. After careful consideration of the rival submissions and materials available, the trial court found him guilty under Sections 498A and 376 and sentenced him to undergo imprisonment as stated above.

4. Advancing arguments on the side of the appellant, Mr.Raghunathan, learned counsel with vigour and vehemence would submit that the prosecution has thoroughly failed to prove any one of the offences put forth against the accused/appellant; that the prosecution has relied on the evidence of P.W.1, complainant, P.W.2, her sister, P.W.3, her mother, P.W.4, her father and P.W.5, who is the first wife of the accused; that on a careful scrutiny of the evidence and the materials available, it would indicate that either cruelty as alleged to have been committed by the appellant against P.W.2 or rape alleged to have been committed on the person of P.W.1 was not proved; that a specific case of the prosecution was that P.W.2 consumed kerosene on 5.2.1998 within 15 days from the time of the marriage between the accused and P.W.2; that at the time of investigation, P.W.4 has categorically admitted that his daughter P.W.2 has taken kerosene on a mistaken impression as water; that this fact was admitted by the Investigating Officer, who relied on the statement of P.W.4; that apart from that the Doctor, who gave treatment to P.W.2 on 5.2.1998, has categorically spoken to the effect that she consumed kerosene accidentally; that P.W.4 in his evidence has stated that consumption of kerosene took place

after 4 or 5 months from the time of marriage; that all would go to show the false theory of consumption of kerosene on that day; that it is pertinent to point out that no complaint was given pursuant to the said incident; that insofar as the charge of rape is concerned, according to the prosecution case, the occurrence has taken place on the night on 5.2.1998, but the complaint was given only on 28.2.1999, the next year and thus, there was undue and inordinate delay, which would clearly speak about the falsity of the prosecution case; and that it is pertinent to note that the delay remains unexplained in any way by the prosecution.

5. The learned counsel further added that the specific case of the prosecution was that on a particular day, the accused took P.W.1 to the house on the pretext to fetch food to P.W.2; that according to the Investigating Officer those things were not at all stated at the time when the statement of the witnesses were recorded; that he has categorically deposed that either in Ex.P.1 or in her statement, P.W.1 has not spoken anything about the fact that she was taken home by the accused on the pretext of fetching food; that the prosecution has produced medical evidence through P.W.7; that according to P.W.7, he medically examined P.W.1 on 26.7.1998; that at that time she complained of pain and stoppage of menstrual period; that she was two or three months pregnant; that on treatment she had missed abortion; that according to the prosecution case, she was raped in the month of February, 1998 and thus, taking into consideration the period of alleged pregnancy, this would also prove the falsity of the prosecution case.

6. He further added that taking into consideration of the fact that even after the time of alleged rape, she has been living long time with the accused. After registration of the case, she was examined by P.W.9 through whom Ex.P.4, medical report was marked. She has clearly spoken to the fact that even on 5.2.1998 she was married to the accused and the rape was also committed on her on that day. Had it been true that she was raped as alleged by her on 5.2.1998 and that according to P.W.1 she informed her sister the very next day about the same, she would have lodged a complaint or taking any steps, but there was undue delay for a period of one year. Under the stated circumstances, the lower court without appreciating the facts and circumstances of the case has found him guilty, and hence, the judgement of the lower court has got to be necessarily set aside.

7. Strongly opposing all the contentions put forth by the appellant's side, the learned Government Advocate would submit that the prosecution has examined P.W.5, Ranjeetha, who is the first wife of the accused; that suppressing the said fact, he has married P.W.2 on 23.1.199 8; that there is evidence of P.W.2 that she was subjected to cruelty, which constrained her to consume kerosene on 5.2.1998; that she was also hospitalised; that the Doctor's evidence was also adduced and what was recorded by the Doctor was the statement given by appellant and it could be well inferred because it was he who took her for treatment, and thus, the prosecution has proved the charge under Section 4 98A I.P.C. Insofar as the rape committed by the appellant on P.W.1 is concerned, P.W.1 has given a complaint stating the circumstances in which she could not give complaint immediately due to fear and threat. Apart from that she has approached P.W.7 Doctor due to the stoppage of menstrual period. The Doctor found that she was 2 or 3 months pregnant. Even after registration of the case also she was medically examined. In view of the evidence adduced by the prosecution through prosecutrix and the same was

corroborated by the medical evidence, the lower court was perfectly correct in coming to a conclusion that the accused had committed sexual assault on P.W.1 and found him guilty. The delay as alleged by the appellant/accused does not assume much importance in this case, because P.W.1, who was sexually assaulted, was a close relative of P.W.2 and the accused and that due to fear also she could not prefer any complaint, which fact has been clearly spoken to by her. Under the stated circumstances, the lower court was perfectly correct in finding the accused guilty, and hence, the judgment of the lower court has got to be sustained.

8. This Court paid its full attention on the materials available.

The gist of the prosecution case as seen above was that the appellant/accused suppressing the first marriage with P.W.5 has married P.W.2 on 23.1.1998; that she was exerted cruelty, which led her to consume kerosene on 5.2.1998; and that she was hospitalised. The second part of the charge that was levelled against the appellant was that on the said day, i.e. on 5.2.1998, he on the pretext of fetching food took his sister-in-law to his house and had committed sexual assault. At the out set, a strong doubt and suspicion is cast on the prosecution case in view of the undue delay of one year. Regarding both the occurrence, namely, the consumption of kerosene due to cruelty exerted by her husband and the sexual assault committed on P.W.1 that took place on 5.2.1998, the complaint was given only on 28.2.1999, after one year. It is pertinent to point out that from the evidence it would be clear that the sexual assault alleged to have been committed on P.W.1 by the accused came to the knowledge of P.W.2 on the very next day. Also, P.W.4 father has not whispered anything in the course of his oral evidence about the sexual assault. The prosecution has not made any sincere attempt to explain the delay. The contention put forth by the learned Government Advocate that due to fear and threat she did not give complaint for a period of one year cannot be a reason under the stated circumstances. It is pertinent to note that P.W.1, who came forward with a case of sexual assault, has lived with the accused for some time even after the alleged incident, which would also cast a doubt on the prosecution case. The prosecution has examined P. W.7 to speak about the fact that P.W.1 came to the clinic complaining of stomach pain and stoppage of menstrual period and she was medically examined. According to P.W.7, P.W.1 was subjected to medical examination and he found that she was two or three months pregnant. Her evidence would clearly show that P.W.1 was medically examined only in the month of July, 1998. The evidence of P.W.7 would clearly falsify the theory of the prosecution case that she was raped on 5.2.1998. Therefore, taking into consideration the cumulative facts and circumstances, it casts a strong doubt on the prosecution case and it would be very difficult to believe the prosecution case.

9. The other part of the case is that the accused exerted cruelty on his wife P.W.2, which led P.W.2 to consume kerosene on 5.2.1998. It remains to be stated that no complaint has emanated from P.W.2 as to the cruelty anywhere. In the complaint of P.W.1 and at the time of investigation, this was also brought to the notice of the Investigating Officer. On 5.2.1998 itself she was taken to P.W.9 Doctor, who examined her on that day through whom Ex.P.4 was marked and it has been stated therein that she mistakenly consumed kerosene as water. At the time of cross examination, the Doctor has clearly deposed that she medically examined P.W.2 and at that time, P.W.2 informed her that she accidentally consumed kerosene. From the said evidence,

the contention of the prosecution that she consumed kerosene only due to cruelty has got to be rejected. Apart from that P.W.4 has stated in his evidence that the consumption of kerosene has taken place after 4 or 5 months from the date of the marriage. But, according to the prosecution case, P.W.2 consumed kerosene on 5.2.1998 just within 15 days from the time of marriage. P.W.4 has also stated that P.W.2 consumed kerosene under mistaken impression as water. Taking into consideration of all the above, it would be highly difficult to accept the theory of the prosecution case that due to harassment and cruelty, P.W.2 consumed kerosene on 5.2.1998. In view of the discussions made above and the infirmities noticed, it would be unsafe to hold that the accused has committed the said offences and to sustain the conviction. This Court is unable to agree with the prosecution case. Therefore, the judgment of the lower court has got to be set aside. Accordingly, it is set aside.

10. In the result, the appeal is allowed. The conviction and sentence imposed on the appellant are set aside. He is acquitted of the charges levelled against him. The appellant/accused is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Index : Yes
Internet : Yes
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To

1. The District & Addl. Sessions Judge Coimbatore
(Fast Track Court-3)
2. The District & Addl. Sessions Judge Coimbatore
(Fast Track Court-3) through Principal District and
Sessions Judge, Coimbatore
3. The Superintendent, Central Prison, Coimbatore
4. The Public Prosecutor, High Court, Madras
5. Mr.O.Srinath, Govt. Advocate(Crl.side),High Court,Madras
6. The Dy. Inspector General of Police, Chennai-4
7. The Inspector of Police, R-1, Pothanur Police Station
Coimbatore